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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/415,467	10/08/1999	MYRON J. BRUDNICKI	050-98-021	4865

7590 05/19/2004

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ATLANTA, GA 30309-3996

EXAMINER
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MERCADO, JULIAN A

ART UNIT	PAPER NUMBER
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1745

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/415,467

Applicant(s)

BRUDNICKI, MYRON J.

Examiner

Julian Mercado

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12-29-03.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 23 and 24 is/are allowed.
- 6) ☐ Claim(s) 1-4, 6, 7, 9 is/are rejected.
- 7) ☐ Claim(s) 5, 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 29, 2003 has been entered.

### ***Claim Rejections - 35 USC § 102 and 103***

The rejection of claims 6 and 7 under 35 U.S.C. 102(b), and the rejection of claim 9 under 35 U.S.C. 103(a) based on Van Linden, has been withdrawn.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Gardner et al. (U.S. Pat. 5,595,833).

Gardner et al. is maintained for the reasons of record. As noted in the November 19, 2003 Advisory Action, the amendment to independent claim 6 now recites the ports as having “top and bottom sides” of the fuel cells from the previously claimed “opposing sides”, with

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independent claims 1 and 6 both reciting that said "top and bottom sides" have "respective ports". As discussed in a prior Office action, a plurality of fuel cells [24] defining a stack each have individual ports or distribution members on both opposing ends and so positioned so that the ports are interfaced with the manifolds and thereby in direct contact with the manifolds (col. 9 line 9-20), thus, to this extent Gardner et al. is maintained to have top and bottom ports of the fuel cell falling along the vertical portion of a perpendicular distribution system such that it remains in contact with the manifolds [14] of the receptacle. (refer to Figure 1)

The examiner acknowledges Applicant's remarks that the present amendment is in accordance with a suggestion to overcome the rejection based on Gardner et al. However, the November 19, 2003 Advisory Action is not believed to have made such remarks on the allowability of the present claims, but rather merely a suggestion to amend independent claim 1 in a manner consistent with independent claim 6 so that applicant's arguments for patentability may be considered to encompass both sets of claims.

#### ***Allowable Subject Matter***

As set forth in a prior Office action, claims 5 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims insofar as the prior art of record and to the examiner's knowledge not teaching or rendering obvious at least to the skilled artisan the instant invention regarding a spiral or spiral stack configuration.

Claims 23 and 24 are allowed for reasons consistent with those set forth for claims 5 and 8 above.

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The prior art made of record and not relied upon in this Office action is considered pertinent to applicant's disclosure. U.S. Pat. 4,876,163 to Reichner (previously made of record) is noted to teach a spiral or staggered stack of fuel cells. (Figures 1 and 3, respectively) To the extent that Reichner may read on applicant's claimed invention, Reichner teaches ports [30] on the top sides of fuel cells [2] which are considered to be in direct contact with receptacle [31] and manifold [29]. (col. 4 line 1-35, see Figure 4) Reichner, however, is precluded from teaching or at least suggesting Applicant's claimed invention as these fuel cells are of the tubular-type, and while tubular-type fuel cells would naturally comprise top and bottom sides, the bottom side of the fuel cells do not have a corresponding port in association therewith. (col. 2 line 62-67)

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian Mercado whose telephone number is (571) 272-1289. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan, can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

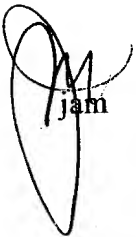
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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



jam



Patrick Ryan  
Supervisory Patent Examiner  
Technology Center 1700